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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-281

JOHN G. SEAY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Seventh Circuit

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TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	4
Reasons for Granting the Writ	7
Conclusion	9

Case Cited

Hubsch v. United States, 256 F2d 820 (5th Cir., 1958)	9

Statutes Cited

18 USC, Section 2314	2, 4, 5, 6, 7, 8, 9, 10
28 USC, Section 1254(1)	2
SHA Chapter 26, Section 3-405	9

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John G. Seay, petitioner, prays that a writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this case on June 30, 1975.

OPINION BELOW

The opinion of the United States Court of Appeals is not yet reported, but is set forth in full as Appendix "A" to this petition on Pages A-1 through A-3. The opinion of the Court of Appeals affirmed the conviction of John G. Seay for an

alleged violation of 18 USC, Section 2314. The petitioner had been tried by bench trial in the United States District Court for the Eastern District of Illinois, the Honorable James L. Foreman, Judge presiding, and was found guilty. The Court denied defendant's post-trial motions, imposed sentences upon the defendant and entered judgment of conviction against the defendant.

JURISDICTION

The judgment of the United States Court of Appeals was entered on June 30, 1975. A Petition for Rehearing was filed on June 11, 1975 and denied by the United States Court of Appeals on July 25, 1975. (Appendix "B") Jurisdiction of this Court is invoked under 28 USC, Section 1254(1).

QUESTION PRESENTED

Did the court below err in affirming the District Court's judgment of conviction of petitioner by holding that petitioner had sufficient "fraudulent intent" as required by Title 18, USC, Section 2314, at the time that he caused a security to be transported in interstate commerce, and whether or not said security which petitioner caused to be transported in interstate commerce was "falsely made, forged, altered or counterfeited", when the fraudulent intent of petitioner's scheme, had been completed prior to the making of the security (check) involved, and its passage or transportation in interstate commerce.

STATUTE INVOLVED

The statute involved is Title 18, United States Code, Section 2314 which states as follows:

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country."

STATEMENT OF THE CASE

This action arose by the return of an indictment by the Grand Jury for the United States District Court for the Eastern District of Illinois which contained a single count charging John G. Seay with a violation of Title 18, USC, Section 2314 in that he did, with unlawful and fraudulent intent, cause to be transported in interstate commerce a falsely made check.

The case was tried before the Honorable James L. Foreman, and the defendant was found guilty. The trial court denied all of defendant's post-trial motions, imposed a term of imprisonment on petitioner, John G. Seay.

The petitioner, John G. Seay, raised one issue on appeal to the United States Court of Appeals for the Seventh Circuit:

> "NO FRAUDULENTLY MADE OR FORGED CHECK WAS EVER PASSED IN INTERSTATE COMMERCE"

The petition on this appeal prays certiorari solely on this issue, that there was insufficient evidence to prove that petitioner caused a fraudulently made or forged check to be passed in interstate commerce.

On June 27, 1972, defendant, John G. Seay, used his official capacity as an accounting official of State Community College, East St. Louis, Illinois to cause a check to be signed by proper college officials and drawn upon the State Community College Revolving Fund Account, Auxiliary Services Fund, at the First National Bank at East St. Louis payable to "Arco Book Distributors" in the amount of $1743.00 (Check No. 1). This check was **not** transported in interstate commerce.

On June 28, 1972, the defendant opened an account at the Southern Illinois National Bank under the fictitious name "Arco

Book Distributors", using the fictitious name of "Gerald Thomas" as sole signatory for the account. Defendant used $200.00 of his own funds to open this account.

On June 29, 1972, defendant deposited to the "Arco" account Check No. 1 in the amount of $1743.00. On June 30, 1972, the balance in the "Arco" account was $1893.00.

On July 3, 1972, defendant drafted a check on the "Arco" account payable to John Seay and signed by defendant with the fictitious name "Gerald Thomas" in the amount of $1883.00 (Check No. 2). Defendant deposited Check No. 2 in his personal account in the Gateway National Bank in St. Louis, Missouri. Check No. 2 was transported from St. Louis, Missouri to East St. Louis, Illinois through normal banking channels.

Defendant's scheme was thereafter uncovered and defendant made immediate and full restitution to the college.

Check No. 2 was the only check to pass in interstate commerce, and was alleged to be the forged or falsely made security which defendant was charged with having transported in violation of 18 USC, Section 2314.

The sole issue presented for appeal is whether, based upon the facts as stipulated, the court erred in finding that the defendant violated 18 USC, Section 2314.

These facts indicate that the first check was indeed fraudulent, but never passed in interstate commerce, and therefore, could not have been the subject of a conviction under 18 USC, Section 2314. The facts further indicate, that the second check, which indeed did pass in interstate commerce, was not made with any fraudulent intent, as any fraudulent scheme which the petition had devised, was complete when the State Community College was deprived of the control of the funds which petitioner misappropriated.

This same issue was presented to the United States Court of Appeals for the Seventh Circuit by the petitioner and remains unanswered.

The opinion of the United States Court of Appeals for the Seventh Circuit affirmed the conviction of petitioner and held that a fictitious name can create a false, forged security within the meaning of 18 USC, Section 2314.

In so holding, the Court of Appeals for the Seventh Circuit refused to answer, and did not address itself to the issue of whether or not the fraudulent intent, if any, of petitioner with regard to Check No. 1, that check drawn by the Illinois Community College at petitioner's request and suggestion as an official thereof, could be imputed to the drawing by petitioner of a check on the fictitious Arco account signed with the fictitious name of Gerald Thomas.

To do so is to allow the conviction under 18 USC, Section 2314, without finding one of the requisite conditions provided by the statute, namely, that the transportation of the forged or fraudulently made security shall be made with fraudulent intent.

REASONS FOR GRANTING THE WRIT

The petitioner, John G. Seay, respectfully and most earnestly and sincerely urges that there exists in this cause manifest, overwhelming and compelling reasons for the granting of a writ of certiorari in this cause. The reasons are as follows:

1. This Court has never decided if a fictitious name is sufficient to create fraudulent intent for the purposes of finding a violation of 18 USC, Section 2314, without further proof of fraudulent intent in the making or transportation of such check.

2. No court has ever reached a conclusion similar to that arrived at by the United States Court of Appeals for the Seventh Circuit in the opinion below.

3. No court has ever imputed fraudulent intent to the making of a check or security for the purposes of finding a violation of 18 USC, Section 2314, in the manner of the United States District Court for the Eastern District of Illinois or the United States Court of Appeals for the Seventh Circuit as indicated in their opinions attached hereto as Appendix "A" and "C".

I

This Court Has Never Decided the Question of Whether Fraudulent Intent May Be Imputed to a Check or Security, When the Scheme to Defraud, if Any, Is Complete and No Person, Institution, or Other Entity Is in Fact, or Possibly Could Be, Defrauded by the Additional Act of the Petitioner.

The United States Court of Appeals for the Seventh Circuit in its opinion affirmed the opinion of the United States District Court for the Eastern District of Illinois and adopted said opinion as its own.

Both of these opinions overlook and misstate the essential requirements of 18 USC, Section 2314 which, by definition, consists of three separate and distinct conditions.

A. A falsely made or forged security; and

B. Transported in interstate commerce; and

C. Willful or fraudulent intent.

The charge against defendant and his conviction by the District Court, and affirmance by the United States Court of Appeals for the Seventh Circuit, renders this a unique case in that there is a telescoping of two separate transactions into the one in order to find a violation of the statute.

The trial court found that Check No. 1 was never passed in interstate commerce. (Appendix "C", Page 1)

Therefore, although this check was fraudulently made, it cannot be the source of conviction under 18 USC, Section 2314 which clearly requires the forged or fraudulently made security to be transported in interstate commerce. The only check which could be the source of a conviction under this statute is the second check which did pass in interstate commerce, but was totally without fraudulent intent.

The Government has sought to make its case based solely on the use of a fictitious name on Check No. 2 to have the fraudulent intent, if any, which petitioner formed in the making of Check No. 1, to the making of Check No. 2. Imputing such fraudulent intent is unique and has never been used by any court in a conviction under 18 USC, Section 2314 prior to the case at bar. The Court of Appeals for the Seventh Circuit, as well as the District Court for the Eastern District of Illinois determined that a fictitious name can create a fraudulent or falsely made security within the meaning of the statute. However, the courts below failed to notice the essence of the case

as they cited, which required that the fictitious name be used with fraudulent intent, or as an "instrument of fraud", *Hubsch v. United States*, 256 F2d 820 (5th Cir., 1958).

Logically, if the fictitious name is to be used as an instrument of fraud, a person must be defrauded, or at least there must be a class of persons who could conceivably be defrauded by the use of the fictitious name.

In the case at bar, we are faced with the unique situation that the use of the fictitious name by the petitioner could not have defrauded any person, or class of persons, and in fact, no person or institution was defrauded by the drawing of the second check using the fictitious name of Gerald Thomas by the petitioner.

Under the Uniform Commercial Code in effect in Illinois as SHA, Chapter 26, Section 3-405, any loss which might have been occasioned by the banks would have fallen upon the Illinois Community College. As the Illinois Community College had already been defrauded to the full extent possible, under the facts, therefore, it was impossible for the banks or the Community College to have been defrauded by the use or making of Check No. 2 by the petitioner.

CONCLUSION

Certiorari is warranted here. Each of the elements which this Court has traditionally found to warrant the grant of certiorari is present here:

A. The jurisdictional issue under a law of the United States, to-wit: 18 USC, Section 2314 is involved;

B. This court has never decided the issue presented in this case;

C. The holding of the Court of Appeals that the fraudulent intent may be imputed to an innocently made security sufficient to comply with 18 USC, Section 2314 is novel, without precedence, either legislative or judicial, and has such far reaching implications that the issue ought to be decided clearly and unequivocally by no less authority than this Court.

The errors of the Court below should not be permitted to stand.

Respectfully submitted

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